

DOCUMENT RESUME

02058 - [A1112057]

[Protest of a General Services Administration Mandatory Requirement Contract Award for Memory Systems]. B-188016. April 15, 1977. 2 pp.

Decision re: Interne Corp.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and Subcontracts (19(4)).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense; Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army; Apex Corp.
Authority: 4 C.F.R. 20.2(b)(2).

Protester contended that the procurement order was for the purchase of a larger memory unit than was specified, and, therefore, the order should have been competitively bid. Protest was denied, because the Army purchased two smaller units to equal the size of the larger one. (SS)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-189016

DATE: April 15, 1977

MATTER OF: Intermem Corporation

DIGEST:

While GSA mandatory contract covers memory units not exceeding 2048K capacity, agency which has need for 3000K capacity may order 2 units, one unit of 1024K and one unit of 2048K, from the GSA contractor in order to meet its need.

The Intermem Corporation (Intermem) protests award by the Department of the Army on September 14, 1976 for add on memory systems under General Services Administration (GSA) mandatory requirements contract GS-OOC-00052. Pursuant to that contract, the Army placed orders with Ampex Corporation (Ampex) for two each, ARM 2365 Core Memory, each comprised of a 1024K and a 2048K memory module to be installed on an IBM 360/65. Intermem complains that the Army has installed two memory systems, each configured to three megabytes capacity (3000K memory). It contends that the maximum capacity unit within the scope of the GSA contract is for 2048K byte memory, and that requirements in excess of that capacity should be competitively bid.

At the outset, the Army argues that Intermem's protest should be dismissed as untimely. Our protest procedures require that protest be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 CFR § 20.2(b)(2) (1976). The delivery order complained of was issued in September of 1976; the protest was filed on December 13, 1976. Since the order was placed with Ampex under the requirements contract, there is no reason to believe that Intermem knew or should have known of the order at the time it was made. Although the Army refers to an exchange of correspondence in October 1976, between Intermem and GSA, as indicating that Intermem knew then of the Army's order, nothing in Intermem's letter to GSA, dated October 8, 1977, identifies the Army's order from Ampex, as such. In this regard, Intermem maintains that it did not know of the Army's order prior to November 29, 1976. Under the circumstances we are not in a position to conclude that Intermem's protest was untimely filed.

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As to the merits of the protest, the Army determined that it could best meet its requirements by combining a 1024K and a 2048K memory modules to achieve a "configured" three megabytes capacity unit, therefore, it placed orders for the component units under the mandatory GSA contract.

The protester contends that the mandatory requirements contract has no application where a users total memory requirements exceed 2048 bytes. In this regard, GSA's instructions concerning application of the contract state that:

"* * * All new requirements for upgrading memory on installed systems will be ordered from these [requirement] contracts, unless the agency is prohibited from doing so by the terms of the contract governing the presently installed system."

The contract itself provides that it:

"* * * is a primary source of supply and provides for the normal supply requirements of all departments and independent establishments * * *."

By entering into it, the Government agreed to order, and the contractor agreed to supply, all requirements for items covered by the contract. While evidently it was possible to meet the Army's particular requirements in more than one way (e.g., a 3 megabyte requirement by purchase of a 3 megabyte device, or by combining the capabilities of a 1024K and a 2048K device), we believe that the Army has the discretion to decide which approach should be used to meet its needs. Since the Army chose the combined approach it was required to purchase the items from the GSA contractor.

Consequently, Intermem's protest is denied.

[Signature]
Acting Comptroller General
of the United States